

Massachusetts Commission on Indian Affairs **ANNUAL REPORT 1979**

Commonwealth of Massachusetts

Edward J. King, Governor

Executive Office of Communities and Development

Byron J. Matthews, Secretary

Commission on Indian Affairs

John A. Peters, Executive Director



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Commission on Indian Affairs
1 Ashburton Place, Room 1004
Boston, Massachusetts

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Sincerely yours,

V. Lloyd Jameson
Coordinator, Government Documents,
Microtext and Newspapers

PUBLICATION:

ANNUAL REPORT, 1979 ✓

1980 ✓

1981 - none left

1982 ✓

1983 ✓

~~1984~~

1986 Not published

1987 Yet.

1988

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The Commonwealth of Massachusetts

Commission on Indian Affairs

*John W. McCormack Building
One Ashburton Place — Rm. 1004*

*Boston, Mass 02108
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EDWARD J. KING

Governor

BYRON J. MATTHEWS

Secretary

JOHN A. PETERS

Executive Director

Edward J. King, Governor
State House, Room 360
Boston, MA 02133

Dear Governor King:

This annual report for the year 1979 summarizes some of the activities that the Commission has involved itself in according to our legislative mandate.

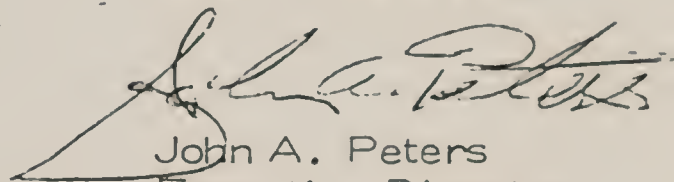
The report also gives a brief overview of past commissions (e.g. agents, overseers, guardians) which hopefully you will find interesting.

I would like to bring to your attention that the estimated Native American population in the Commonwealth is between 10-12,000. In our efforts to assist this constituency, we have received very little support from the State. Therefore, we hope that Massachusetts will adopt a more positive relationship with the tribal Nations, inter-tribal organizations and Native individuals in this region.

Because of an inadequate state policy with regard to these Native People, various elements of state government have eroded the delicate structure of these survivors. The human rights of Native People, such as determining their form of governments and protecting their territories, are in serious jeopardy by reason of the Commonwealth's lessening the importance of their concerns. To this end, we recommend that appropriate measures of cooperation be implemented to alleviate the inability of the Commission, the Commonwealth and the United States to assist in

expelling the disadvantages facing the Native population within the Commonwealth
and establish a positive working relationship with them.

Walk in Balance,

A handwritten signature in dark ink, appearing to read "John A. Peters", is written over the printed name.

John A. Peters
Executive Director

JAP;bb

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INTRODUCTION - HISTORY OF THE COMMISSION ON INDIAN AFFAIRS

The purpose of this section is to acquaint the reader with the Commission on Indian Affairs, its authority and its historical roots. This section does not purport to be a detailed history of Indian Commissioners but rather attempts to highlight certain periods of Massachusetts' history when commissions were established. It is hoped that the reader will gain a better perspective of the current commission's authority via the almost plenary power of previous commissions.

The present-day Commission on Indian Affairs was enacted into law in 1974. Mass. Gen. Laws Ch. 7 Sec. 38 (1974). The act provides for seven (7) commissioners to be appointed by the Governor with each member being of American Indian descent and representative of the major tribes in Massachusetts. The commission is empowered to investigate problems common to American Indians and persons of American Indian descent who are residents of Massachusetts. The commission is also to "assist tribal councils, Indian organizations and individuals in their relationship with agencies of state and local government, assist with social services, education, employment opportunities, health, housing problems, civil rights, legal aid, treaties, taking of a census of Indian residents, and any other services concerning Indian residents of the Commonwealth."

Although it appears that the commission has an expansive role in Indian Affairs, it has no power of enforcement, regulation or supervision. The commission serves mainly as an advisor to Indians. Although the commission can assist Indians in their relationship with governmental agencies concerning various social services, the role of the commission appears to be limited to that of an interceder or mediator with no power to resolve the conflict. The commission has no direct power over state appropriations for Indians which would probably

be the commission's most useful and powerful tool in aiding the Indians in Massachusetts. However, the commission can make its and the Indian's presence known through its recommendations to the Secretary of Administration and Finance and through the commission's annual report to the General Court.

There was no need for Indian Commissioners or guardians until the White man started to confine Indians to specific areas of land. Until this time the Indians knew of no confinement by Whites and were autonomous. Early in the 1600's the English established Indian villages for "worthy" Indians. During the mid-1600's these Indian villages were granted limited autonomy. Kawashima, Legal Origins of the Indian Reservation in Colonial Massachusetts, 13 Amer. J. Leg. History 42, 43 (1969). Under this limited self-rule Indian villages "should choose their own magistrates, who would hear and determine all minor cases, civil and criminal, arising among the Indians". 13 Amer. J. Leg. History 42, 43 (1969). However, capital punishment cases and more complex cases were taken before the Court of Assistants. 13 Amer. J. Leg. History 42, 44 (1969).

After King Philip's War the somewhat liberal self-government of the Indian villages was ended. In 1677 the General Court of Massachusetts passed an act stating that all Indians who were permitted to live within the colony should be confined to plantations. 13 Amer. J. Leg. History 42, 44 (1969). This act was aimed at preserving the peace and security of the colonies, not at helping the Indian.

In 1694 an act was passed "for the Better Rule and Government of the Indians in their several Places and Plantations". Province Laws Ch. 17 (1694). The purpose of this act was to lead the Indians into "civility and Christianity". This act empowered the governor to appoint commissioners who were charged

with the inspection and care of plantation Indians. The commissioners were empowered as justices of the peace over the Indians in all matters (civil and criminal), and were empowered as guardians of the Indians to handle all kinds of problems concerning the welfare of the Indians. 13 Amer. J. Leg. History 42, 46 (1969). Their duties ranged from providing shelter, tools and provisions for Indians to acting as executor of deceased Indians and providing for burial of Indians who died in poverty. Kawahima, Indians and the Law in Colonial Massachusetts 1689 - 1763, Ph. D. dissertation, University of California Santa Barbara, (1967).

The Act of 1694 which empowered commissioners over the Indians continued until 1746 when a statute for "Better Regulating the Indians" was passed. Acts & Resolves of the Province of Mass. Bay Ch. 12 (1746). This statute provided for the appointing of three (3) persons for each plantation to act as guardian. The guardians were not only empowered as justices of the peace, but had the power to lease Indian land not in use by the Indians. The monies collected from these leases were to be used for the support of the Indian paupers. This act also gave the guardians limited power to sue on behalf of the Indians for certain trespasses. The guardians were required by this act to submit a report and their accounts to the legislature each year. This act was renewed in 1753 for five years and in 1758 for three years.

The guardians during the provincial period were the most important and powerful people in the Indian villages. The Indian reservations were under the strict supervision of the guardians who were directly in charge of Indian affairs within the reservation.

Although the guardians were only in charge of a single reservation, there was, however, a centralized system of supervision of all reservations.

The General Court appointed a Superintendent of Indian Affairs to supervise the reservations in Massachusetts. His purpose was to serve as a "medium between the guardians of the Indians and the colonial administration and was to insure that the orders and acts concerning the natives were effectively carried out". — 13 Amer. J. Leg. History 42 (1969).

In 1763 an act was passed establishing the Mashpee plantation as a district. Under this act the Indians were given limited self-rule. Although overseers held virtually all the power, the Indians had the power to elect the overseers. Acts & Resolves of the Province of Mass. Bay, Vol. IV Ch. 3 (1763). However, this act was repealed in 1788 by An Act for the Better Regulating of the Indian, Mulatto and Negro Proprietors and Inhabitants of the Plantation called Marshpee, in the County of Barnstable. Laws & Resolves of Mass. Ch. 38 (1877). This Act placed the Indians under the total control of the overseers. The overseers were no longer to be elected by the Indians, but were to be appointed by the governor. This act did not mention whether the overseers had to be of Indian descent. The overseers were given the power to establish rules and regulations for managing the plantation and had the power to regulate the police. The overseers also had the power of regulating and managing the Indian's land, streams, ponds, fisheries, their contracts, bargains, wages, debts owed to Indians and to represent them in suits. Moreover, the overseers had the power to bind out by indenture the children of indigent Indians.

During the early 1800's, Commissioners of sorts were appointed; these commissioners usually had the job of partitioning Indian land, e.g. Laws of Mass. Ch. 69 Vol. 5B (1809 -1812). There were also appointment of guardians over Indian lands. In 1811 An Act for the Better Regulation of the Indian, Mulatto, and Negro Proprietors of Gay Head in the County of Duke's County empowered the governor to appoint three (3) guardians over the Indians at Gay Head. Laws of Mass. Ch. 78 Vol. 5B (1811). These guardians were empowered to take possession of the land and to allot to the Indian, Mulatto and

Negro proprietors parcels of land for them to improve upon. Any land not allotted was to be leased by the guardians and the revenue used to support the sick and poor. The guardians also had the power to sue for trespass for the Indians. The guardians were required to keep a record of their accounts and to report annually to the General Court. Although these guardians did not have the sweeping powers of the overseers at Marshpee, they did, however, still exercise control over the Indians' lives.

In 1848 the governor appointed three (3) commissioners to visit the tribes and parts of tribes of Indians in the Commonwealth. Acts & Resolves of Mass. Ch. 82 (1848). The commission was to examine the condition of the Indians and report to the legislature on what legislation would be best to promote the improvements and interests of Indians. The commissioners also had to report on their accounts and expenses.

The governor appointed F. W. Bird, Whiting Griswold, and Cyrus Weekes as commissioners. In their report the commission identified 11 tribes in Massachusetts: Chappaquiddic, Christiantown, Gay Head, Fall River or Troy, Marshpee, Herring Pond, Grafton or Hassanamisco, Dudley, Punkapog, Natick and Yarmouth. House Report No. 49 p. 5 (1849). The commissioners also submitted an act for the improvement of the Indians. The commissioners' act called for the repeal of all laws related to Indians. The commission recommended the adoption of a uniform system of Indian laws to apply to all the tribes in the State. House Report No. 49 pp. 55-56 (1849). The commissioners recommended the fixing of the law on Indian division and descent of Indian land. They foresaw the possibility of various problems and litigation in this area. House Report No. 49 p. 56 (1849). The commission also recommended the merging of all Indians except those at Marshpee, Herring Pond and Martha's Vineyard into the general community. It was then recommended

that the privileges of citizenship be granted to any Indian wishing it. Citizenship would entail the liability of taxation and the privilege of voting upon paying a poll tax. The commissioners also recommended the appointment of a single commissioner rather than the guardians and the commissioner of Marshpee "as indispensable to the improvement of the Indians". House Report No. 49 p. 57 (1849). This single commissioner would be empowered to apply all the "moneys appropriated by the State for the benefit of the Indians, and who shall devote his whole time, if need by, to their improvement, especially to devising means for gradually preparing them for the privilege of citizenship". House Report No. 49 p. 55 (1849).

Eleven years later, by an act of the legislature, the governor was empowered to appoint a single commissioner to examine the condition of Indians in Massachusetts. Laws & Resolves of Mass. Ch. 266 (1859). The commissioner was to report to the governor on the following matters:

1. the number of Indians, their abode, distribution, whether by tribes or otherwise, age and sex classifications, marital status, and number of Indians of mixed race.
2. The social and political condition of the Indians.
3. The economic status of the Indians, including their property - whether held in severality or in common.
4. Facts concerning their personal or social condition which may help the legislature in determining whether to immediately or gradually place Indians on the same legal footing as other inhabitants in the Commonwealth.

The commissioner was also to prepare and draft bills for the consideration of the legislature on the granting of civil and political rights to Indians.

The governor appointed John Milton Earle as commissioner. In his report the commissioner identified ten "bands, communities, or tribes, having funds or reservations, or which have had them recognized as wards of the State".

Senate Report No. 96 p.9 (1861). These were the Chappequiddick, the Christiantown, the Gay Head, the Marshpee, the Herring Pond, the Natick, the Punkapog, the Troy or Fall River, the Hassanamisco and the Dudley. Earle recommended that all the Indians except those on plantations of the Chappequiddick, Christiantown, Gay Head, Marshpee, Herring Pond, Fall River and Dudley tribes be placed on the same legal footing as other inhabitants of the Commonwealth. Senate Report No. 96 p. 132 (1861). He also recommended that any member of the excepted tribes be allowed to file for citizenship. Earle also recommended the appointment of a State commissioner who would "watch over the interests of the Indians of the State, to guard and protect their rights, and to promote their rights, and to promote their general welfare and improvement". Senate Report No. 96 pp. 132-133(1861). The commissioner would also have the task of trying to organize and reduce the law concerning Indians to a well-digested system. Earle also recommended that the commissioner be in charge of dispersing the funds appropriated for the Indians. Senate Report No. 96 p. 134 (1861). Both the report of 1859 and 1861 called for the appointing of a single state-wide Commissioner of Indians. It appears that the most important function of the commissioner would be the dispersing of state funds to the Indians. This power of the purse, although strengthening the office of commissioner, would allow a commissioner to control the Indians. A commissioner who had the potential power to control the Indians does not appear to be what was needed.

Commissioner Earle was not alone in his concern for the Indians. In 1865 a federal Indian agent, Dr. M. Davis, indicated in a letter to Massachusetts Governor John Andrew the need for setting up an investigative committee or commission to look into land claims of the Stockbridge tribe then living in Wisconsin, he was told by members of the tribe that the Indian title to certain land in the Housatonic Valley had never been extinguished. Senate

Report No. 46 (1865). Governor Andrew forwarded this information to the legislature, but it appears that a commission was never formed.

Although the office of a state-wide Commissioner of Indians that the reports of 1849 and 1861 recommended was never established, commissions over the individual reservations did continue. In 1932 an advisory commission for the town of Mashpee was enacted into law. Laws & Resolves of Mass. Ch. 223 (1932). The commission was unpaid and consisted of three(3) members who were required to be head of a state department or head of a division. The commissioners were appointed by the governor. The commission had the power to supervise all the financial affairs of Mashpee. No appropriation could be made or expended or any debts incurred without the approval of the commission. The commission also had the power to order compliance with the tax laws relative to collection and assessment. Although the commission was only empowered to supervise and regulate the financial affairs of Mashpee, this power of the purse could in fact give the commissioners a good deal of power to regulate and supervise the lives of the residents of Mashpee. This Act was renewed over the years and remained virtually unchanged until 1969 when it was not renewed.

Almost one year before the present commission was formed a resolve was passed calling for a special commission to be established to make "an investigation and study of the feasibility and advisability of returning to Indian tribes land which was taken from said Indian tribes by the Commonwealth". Acts & Resolves of Mass. Ch. 149 v.II (1973). The commission was to be composed of three (3) members of the senate, five (5) members of the house of representatives, and five (5) persons appointed by the governor, three (3) of whom were to be Indians. However, this special commission was never formed and no investigation was ever made.

Thus it is hoped that this section of the annual report has exposed the reader to how the current commission has evolved from the all-powerful colonial commissions on Indians. The colonial commissions had the power to take Indian land, and at their zenith in power had the authority to take Indian children from their homes and make them indentured servants. The present commission does not have such sweeping powers and it is doubtful whether any governmental agency should have such powers. However, the present role of the commission as advisor and interceder for Indians may be lacking in real authority to act in the best interests of Massachusetts Indians.

COMMISSIONERS

The Massachusetts Commission on Indian Affairs consist of seven (7)

Native American Indians appointed by the Governor to represent the Indian populous areas and groups. Each member serves a term of three (3) years.

They are as follows:

Mrs. Zara Ciscoe-Brough, Chairperson (Pro-Tem) Nipmuc
Hassanamisco Reservation
Grafton, MA 01519
Tel # 839-5182

Mrs. Edith Andrews, Vice-Chairperson Bristol County
149 Clarendon Street
North Dartmouth, MA 02747
Tel # 994-4745

Mrs. Elsie Basque Boston Indian Council, Inc.
305 Center Avenue
Abington, MA 02351
Tel # 878-7282

Mr. Bernard Mallory Plymouth County
15 Thorney Lea Terrace
Brockton, MA 02401
Tel # 584-1760

Mrs. Thelma Weissberg Gay Head Wampanoags
State Road
Gay Head, MA 02535
Tel # 645-3389

Mr. Earl Mills, Sr. (Resigned 4/79) Mashpee Wampanoags
Lake Avenue
Mashpee, MA 02649

TO BE FILLED Balance of State

BUDGET

The Commission on Indian Affairs original requested a budget of \$94,170.32 for fiscal year 79'. The approved State budget was \$39,450.

Because of the lack of adequate funding, the development of programs, research, and the overall productivity of the Commission has been greatly curtailed.

Presently, the Commission is staffed with an Executive Director and a Planning & Liaison Assistant. The PLA is the only position funded this year although six (6) positions were requested. Other appropriations for 79' included in the \$39,450 budget are attached.

BUDGET BREAKDOWN FY 79

PROGRAM NAME: COMMISSION ON INDIAN AFFAIRS

PROGRAM NO. 14

ACTIVITY UNIT				SUB		APPROPRIATION ACCOUNT														SUB		ALLOTTED AMOUNT														
5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	24	25	26	27	28	29	30	31	32	33	34	35							
3	3	1	2	0	1			3	7	0	0	0	1	0	0	0	1								9	3	3	6	0	0						
3	3	1	2	1	4			3	7	0	0	0	1	0	0	1	4								7	0	0	0	0							
3	3	1	2	0	2			3	7	4	7	0	0	0	1	0	2								3	3	7	1	0	0						
3	3	1	3	1	0			3	7	4	7	0	0	0	1	0	0								3	7	0	0	0	0						
3	3	1	3	1	1			3	7	4	7	0	0	0	1	1	1								5	0	0	0	0							
3	3	1	3	1	4			3	7	4	7	0	0	0	1	1	4								7	5	3	0	0							
3	3	1	3	1	6			3	7	4	7	0	0	0	1	1	6								7	9	0	0	0							
1																									3	9	4	5	0	0						

Personnel	3	3	7	1	0	0	0
Travel	3	7	0	0	0	0	0
Printing	5	0	0	0	0	0	0
Office Expenses	7	5	3	0	0	0	0
Rental	7	9	0	0	0	0	0
	3	9	4	5	0	0	0

L E G I S L A T I O N

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LEGISLATIVE BILL INFORMATION

On the following pages you will find the legislative history of the four (4) bills that were filed by the Commission on Indian Affairs in 1978/79.

During 1979, the Commission continued to present testimony and support these bills.

In December (1979), the Commission refiled House Bill #115 (Presently S.1843) "Establishing Indian Housing Authorities".

The Boston Indian Council, with the full support of the Commission, refiled House Bill #117 (Presently H.1031) "Establishing Thirty (30) Full Tuition Scholarships for Native Americans".

1979 LEGISLATIVE BILL HISTORY

H 114 Departmental Recommendations

So much of the recommendation of the Commission on Indian Affairs as relates to establishing "a five (5) year moratorium on the excavation of known Indian burial grounds.

- 1/3/79 H Referred to the committee on Commerce and Labor - HJ 37A
S Senate concurred - SJ 129A
- 4/25/79 H Reported adversely by committee to Clerk's Office for processing
- 5/1/79 H Committee recommended ought NOT to pass and placed in the Orders of the Day for the next session - HJ 824
- 5/2/79 H Report accepted - HJ 866
- 5/3/79 S Placed in the Orders of the Day for the next session - SJ 558
- 5/7/79 S Report accepted - SJ 575

(KILLED IN COMMITTEE)

H 115 Departmental Recommendations

So much of the recommendation of the Commission on Indian Affairs as relates to establishing Indian Housing Authorities.

- 1/3/79 H Referred to the committee on Urban Affairs - HJ 38A
- 1/3/79 S Senate concurred - SJ 130A
- 4/23/79 S Bill reported favorably by committee as changed and referred to the committee on Senate Ways and Means - SJ 438
- 11/4/79 S No report from Committee

(DIED IN SENATE WAYS AND MEANS)

H 116 Departmental Recommendations

So much of the recommendation of the Commission on Indian Affairs as relates to granting Native American Indians indigenous to the Commonwealth of Massachusetts or other enrolled tribal members who are residents of the Commonwealth of Massachusetts for a period of five (5) consecutive years, fishing, hunting, and trapping rights in the Commonwealth of Massachusetts at no cost.

- 1/3/79 H Referred to the committee on Natural Resources and Agriculture - HJ 37A
- 2/15/79 H Committee recommended ought NOT to pass and placed in the Orders of the Day for the next session - HJ 109
- 2/20/79 H Report accepted - HJ 120
- 2/21/79 S Placed in the Orders of the Day for the next session - SJ 81
- 2/21/79 S Report accepted - SJ 90

(KILLED IN COMMITTEE)

H 117 Departmental Recommendations

So much of the recommendation of the Commission on Indian Affairs as relates to establishing thirty (30) full tuition scholarships for Native American Indians indigenous to the Commonwealth of Massachusetts or other enrolled tribal members who are residents of the Commonwealth of Massachusetts for a period of five (5) consecutive years attending State institutions of higher learning.

- 1/3/79 H Referred to the Committee on Education - HJ 37A
- 1/3/79 S Senate concurred - SJs 129A - 130A
- 4/10/79 H Bill reported favorably by committee and referred to the committee on House Ways and Means - HJ 574
- 10/17/79 H Motion to discharge from committee pending
- 10/17/79 H Postponed until Wednesday, October 24 - HJ 1783
- 10/24/79 H accompanied H6819 - HJ 1812
- 10/24/79 H Pending motion to discharge from committee laid aside - HJ 1824

(WENT TO STUDY - DIED IN STUDY)

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 1843) of Joseph E. Timilty and the Commission on Indian Affairs, by John A. Peters, executive director, for legislation to establish Indian housing authorities. Urban Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT TO ESTABLISH INDIAN HOUSING AUTHORITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 121B of the General Laws is hereby
2 amended by adding thereto the following new Section 3B: —

3 Section 3B. Indian Housing Authorities.

4 (1) There is hereby created, in and for the Nipmuc, Mash-
5 pee, and Gay Head Wampanoag Indian tribes, a public body,
6 corporate and politic, to be known as the "Housing Author-
7 ity" of each said Indian tribe, which shall have and exercise
8 all necessary legal powers to carry out low income housing
9 projects for Indians; provided, that no such Indian Housing
10 Authority shall transact any business nor exercise its powers
11 hereunder until or unless the Tribal Council of the respective
12 tribe, by proper resolution, declares that there is a need for
13 an authority to function therein.

14 For purposes of this section, "Indians" means members of
15 the above-mentioned tribes and includes members of the Mic-
16 Mac, Maliseet, Passamaquoddy, Penobscot, Wampanoag tribes,
17 and any other tribe, band, group or community of Indians who
18 are wards of any state government, and members of tribes
19 who are federally-recognized.

20 (2) Each said housing authority shall be subject to and
21 operate as provided in the statutes and regulations of the
22 United States applicable to Indian Housing Authorities.

23 (3) Except as otherwise provided in this section, but only
24 to the extent consistent with the statutes and regulations of
25 the United States applicable to Indian Housing Authorities,

26 each said Indian Housing Authority shall possess all rights,
27 powers, functions, and duties provided by this Chapter for
28 local housing authorities, and each said Indian tribe shall pos-
29 sess all rights, powers, functions and duties with respect to
30 said Indian Housing Authorities, as are provided by this Chap-
31 ter for municipalities with respect to local housing authori-
32 ties, and may require periodic reports from the respective
33 Housing Authorities.

34 (4) All powers of appointment and removal of members of
35 such Indian Housing Authorities shall be exclusively exercised
36 by the respective tribal councils, but members shall otherwise
37 be appointed, removed, compensated and organized in the
38 same manner for the same terms as are provided by this
39 Chapter for housing authorities in cities.

40 (5) Neither the Commonwealth nor any Indian tribe or
41 tribal council shall be liable for any of debts, obligations or
42 liabilities of any Indian Housing Authority; provided, that the
43 Commonwealth or any tribe may assume such liabilities under
44 the same circumstances and for the same purposes as are pro-
45 vided by this Chapter for such assumption of liabilities by the
46 Commonwealth and by municipalities with respect to local
47 housing authorities.

48 (6) The area of operations of the housing authority of the
49 Nipmuc tribe shall include, but not be limited to, the Hassa-
50 namisco-Nipmuc Reservation; the area of operations of the
51 housing authority of the Mashpee tribe shall include, but not
52 be limited to, the Fall River-Freetown Wampanoag Reserva-
53 tion; the area of operations of the housing authority of the
54 Gay Head Wampanoag tribe shall include, but not be limited
55 to, the Fall River-Freetown Wampanoag Reservation.

56 (7) The operation of any Indian Housing Authority in any
57 locality shall not affect or diminish the right or power of any
58 other duly constituted housing authority to operate in such
59 locality as authorized by this Chapter.

60 (8) The Governor is designated as agent of the State to
61 apply for any funds or other aid, co-operate, and enter into
62 contracts and agreements with the Federal Government, any
63 Indian Housing Authority, or any other appropriate State or

64 local agency relating to the provision of necessary services to
65 Indian housing projects to be located within Indian reserva-
66 tions.

1 SECTION 2. If any provision or clause of this Act or appli-
2 cation thereof to any person or circumstances is held invalid,
3 such invalidity shall not affect other provisions or applications
4 of the Act which can be given effect without the invalid pro-
5 vision or application, and to this end the provisions of this Act
6 are declared to be severable.

By Mr. King of Boston, petition of Melvin H. King and other members of the House relative to establishing full tuition scholarships for native Americans attending state institutions of higher learning. Education.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT ESTABLISHING THIRTY FULL TUITION SCHOLARSHIPS FOR NATIVE AMERICANS ATTENDING STATE INSTITUTIONS OF HIGHER LEARNING.

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:

1 Chapter 69 of the General Laws is hereby amended by adding
2 after Section 7E the following:

3 *Section 7F.* There are hereby established thirty (30) full scho-
4 larships to be given to qualified and eligible Native Americans
5 residing in the Commonwealth of Massachusetts who meet criteria
6 established by the Board of Higher Education pertaining to finan-
7 cial need.

8 As used in this section, "Native Americans residing in the Com-
9 monwealth of Massachusetts" shall be deemed to include persons
10 (a) who are members of the Wampanoag, Nipmuc, Passama-
11 quoddy, Penobscot, Maliseet, and Micmac tribes, or any other
12 tribe determined by the Massachusetts Commission on Indian
13 Affairs to be indigenous to the Commonwealth, and (b) who have
14 resided in the Commonwealth for at least three years.

15 The Massachusetts Commission on Indian Affairs shall deter-
16 mine whether an applicant for said scholarship is a Native Ameri-
17 can residing in the Commonwealth of Massachusetts and shall
18 provide certification to any person satisfying the conditions of the
19 preceding paragraph. Such certification shall be submitted by the
20 applicant to the Board of Higher Education.

21 Said scholarships shall be awarded by the Board of Higher
22 Education to each such person who qualifies for entrance to any
23 accredited institution of higher learning, community college, or
24 university which is supported wholly or partially by State funds.
25 The amount of such scholarships shall be equal to the amount of
26 tuition, fees and course-related expenses charged by the institution
27 attended. Such scholarships shall also include a stipend equal to
28 the average amount awarded to students holding comparable scho-
29 larships within a given institution. Said scholarships shall continue
30 for such time as the recipient thereof remains a student in good
31 standing at such institution, but in no event shall any student
32 receive such scholarship aid for more than four years. The Board of
33 Higher Education shall establish such regulations defining finan-
34 cial need as a criterion for eligibility for these scholarships as it
35 deems necessary, and said scholarships shall be payable by the
36 Board of Higher Education from sums appropriated for scholar-
37 ship programs.

INDIAN CHILD WELFARE ACT OF 1978

The Indian Child Welfare Act of 1978 (Public Law 95-608), enacted November 3, 1978 and effective May 6, 1979, stipulates a series of special procedures in child custody proceedings involving children who are members of, or eligible for membership in a federally recognized Indian Tribe which the State courts and State Child Welfare Agency must follow. The Act affects all of these children and also child custody proceedings except for placements based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents. Consequently, all foster care, adoptive and pre-adoptive placements, termination of parental rights and Children in Need of Services (CHINS) cases involving Indian children are affected by the Act.

The Commission has taken steps to work with representatives from Native American organizations, Tribal Councils and Inter-Tribal organizations to formulate a plan to be developed and implemented into the State Agency's policy in order for them to keep in compliance with the provisions of the Act. Also discussed was the development of Title II programs. Under Title II of the Act, grants will be made to Indian Tribes and organizations for the establishment and operation of Indian child and family services programs on or near reservations. The object of these programs would be to prevent the break up of Indian families and to insure that the permanent removal of an Indian child from his home is the last resort.

Other Commission activities in regard to the Indian Child Welfare Act include:

- a. Letters of support sent to the Department of Social Services requesting the hiring of Native American Indians be hired in the Department in social worker

positions to promote cultural sensitivity by the State.

- b. Visits and field work were made by Commissioners to the local Public Welfare Offices, native families who needed assistance in child care, neglect, abuse, etc. These visits were followed- up by letters to the State Welfare Department in Boston.
- c. Research with such agencies as the Department of Social Services, Federal Indian Task Force, etc. was done by the Commission office on a clearer interpretation of the Indian Child Welfare Act of 1978.
- d. Meetings were held with the Commission office and the Department of Social Services. Material from previous meetings with Tribal Councils, Native American organizations, etc. were presented to implement into the State plan.

Pending the availability of funds, the Commission intends to pursue further development of the Indian Child Welfare Act of 1978.

Attached, please find a copy of the Act.

Indian Child Welfare Act

Because of the significance of the Indian Child Welfare Act for all Indian children, families and tribes, *Indian Family Defense* is reprinting the act in its entirety.

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power . . . To regulate Commerce . . . with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term

(1) "child custody proceeding" shall mean and include--

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688,689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688,689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement

of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102.(a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child

by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be

considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) (1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal

Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program

shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

TITLE IV—MISCELLANEOUS

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

INDIAN BURIALS

The Commission submitted a legislative bill for a "Five year moratorium on grave digging" only to discover that there are already existing laws that protect Indian burial grounds. These laws are not recognized by the State of Massachusetts therefore, it is our duty to bring these laws to the attention of the proper authority. Consequently, the Commission met with the State Archeologist and several of her assistants. They agreed to inform us of all State excavation contracts in Massachusetts so in the event that Indian remains, artifacts, etc. are uncovered, an Indian person will be on site to oversee that they are properly removed if necessary, and that there is no destruction to them.

The office was involved in a re-burial ceremony on Nantucket in June. Indian remains were removed from an Indian grave site on State land owned by the University of Massachusetts where installation of a septic system was taking place. This re-interment ceremony opened the lines of communication between the Commission office and the State Archeological Commission and brought this issue to light. Steps are being made to recognize Indian and ancient grave sites with their full support and cooperation.

Indians protest removal of body

By NANCY AYOTTE
Staff Writer

NANTUCKET — The removal of the remains of an Indian grave from state land on Nantucket has sparked the concern of the Mashpee Wampanoag Indians.

"It's sacrilege as far as I am concerned," tribal member Anabella Bingham said Monday. "If we tried that just once, there'd be such a hoop-de-doo all over the country, we'd never hear the end of it."

Mrs. Bingham and other Mashpee Indians were contacted by John Walsh of 35 Pine Street in Nantucket concerning the excavation of an Indian grave this winter on property owned by the University of Massachusetts at its field station at Quilize. Walsh, an Irishman by descent, said he is sympathetic to the concerns of the country's Indians.

"To the very best of my knowledge, we are in compliance with whatever laws I know about," Wesley Tifney, head of the UMass field station on the Island said.

Tifney said yesterday that since UMass officials knew from earlier excavations that their land is a valuable archeological site, they agreed with a state request to survey the property before going ahead with work on the installation of a septic system.

"I think the UMass people did very well," said state archaeologist Valerie Talmage of the Massachusetts Historical Commission.

"I think it is better to call in a consultant archaeologist to take care of it than to go into the site with a backhoe," she added.

Under the law, UMass was not required to notify the state unless an archeological find was discovered during work on the septic system.

Instead, she said, an interior survey was made of the area during which one grave site containing one skeleton was discovered and excavated from the site. Eventually, she said, the skeleton is expected to be returned to the UMass property for a ceremony and new burial.

To date, only one Indian grave has been found on that property, although other Indian artifacts have been uncovered there.

"This is not an Indian burial ground," Ms. Talmage said, adding that only a few Indian graves have ever been found on Nantucket.

"The Wampanoags are very concerned about any burial site that is identified and disturbed," Mrs. Bingham said.

The skeleton taken from the UMass site was estimated to be about 2,000 years old and was found in an upright position, Walsh said. He also said that the skeleton is now in the possession of the state.

"We feel that our ancestors have the right to lie in peace where they are buried," Mrs. Bingham said. "There has to be some way to protect the burial sites, either state, federal or town bylaws — maybe all three."

State, federal and local officials say, however, that there are few laws to protect Indian graves.

"It seems to me that we ought to cooperate whenever reasonable," said state archaeologist

George Buckingham. "We just can't stop all building to adhere to their wishes," he added.

Buckingham said he and selectman Walter Krott met with Keesseetomock, the Wampanoag tribal medicine man and Swift Eagle Earl Mills Sr. on Nantucket last week and told them they'd be willing to help notify the public of the tribe's concerns.

Buckingham said the building and health inspectors, and the conservation commission and planning board, could be asked to notify builders that the discovery of Indian grave sites should be reported to the Wampanoags.

Both state and federal officials said there are no laws they know of to force private property owners to preserve Indian burial grounds.

The state has regulations governing the handling of archeological sites found on state land, and the federal government is working to strengthen laws relating to federal land.

A congressional resolution passed in Aug. 1970 urges federal agencies to consult with native religious leaders in determining what sites are important to Indians.

Many current day Nantucketers believe that there are no descendants of the several tribes that once lived on the Island. A deadly plague wiped out the majority of the Indians here during the days of the first white settlers.

The last full blooded Indian, Akwan Quany, died in 1854. But the belief that there are no descendants is not true, Mrs. Bingham said. She said some descendants of the Nantucket Indians now live in Massachusetts.

Selectmen meet with

Indians

Nantucket Inquirer, 6/7
Selectmen George Buckingham
and Walter Knott met last Thurs-
day with representatives of the
Wampanoag Nation to discuss
among other things, ways and
means of preventing the
destruction of Indian gravesites
and artifacts on Nantucket.

Buckingham said the meeting
was basically an exchange of in-
formation.

"They are trying to increase more
consciousness on the part of the
Nantucket people toward paying
more respect to the culture of
Indians," Buckingham said.

"They also tell us that the Indian
skeleton found last winter should
not have been removed," he added.

An Indian skeleton believed to be
2,000 years' old was found last
January on Quaise property
belonging to the University of
Massachusetts. Because it was not
on town land, Buckingham said,
the disposition of the skeleton did
not come under the Selectmen's
jurisdiction.

"We told them we will co-operate
to the extent of our ability to do
so," Buckingham concluded.

Cape Cod Times - Sunday, July 15, 1979

Wampanoags bury ancestor

NANTUCKET — About 12 members of the Mashpee
Wampanoag Indians traveled to Nantucket on Monday to
bury again the remains of a 2,000-year-old Indian ancestor
which had been removed from the original grave site in
January by state officials.

The skeleton had been excavated from the property of
the University of Massachusetts field station in Quaise to
make way for a new septic system. The actual excavation
was performed by a state archaeologist.

Inquirer and Mirror (Nantucket paper)
Thursday, July 12, 1979

Indian skeleton returned to Nantucket for ceremonial burial

The skeletal remains of an Indian, having the remains returned to Nantucket. Ten Indians, including Supreme Medicine Man Slow Turtle, conducted Monday afternoon's ceremonies.

The skeleton was unearthed last winter during an archaeological survey prior to the installation of a proposed septic system of University of Massachusetts property. The bones were removed from the burial pit and taken to the Peabody Museum in Boston for analysis and carbon dating. Kim Davis, of the Massachusetts Historical Association, said Monday the bones had been dated at about 300 A.D.

Indians of the Wampanoag Nation were instrumental in

Turtle said. "When you get right down to it this whole country is based on a farce."

In areas known or suspected to contain Indian artifacts Slow Turtle would like to see any excavation projects overseen by an Indian.

Pine Street resident John Walth, who was also instrumental in having the skeleton returned to Nantucket, has received the following telegram from Senator Edward M. Kennedy:

"I want to commend you and the many others who have struggled to preserve Indian burial grounds, and who today return to Nantucket for a unique Wampanoag ceremony of reburial."

"All Native Americans must be guaranteed the fundamental right to preserve their proud heritage. The preservation of ancestral burial grounds is vital to this heritage, and today's ceremony reaffirms the commitment to protect the rights of Native Americans."

"I am hopeful that today will also serve to re-emphasize the need to respect traditional native religious concerns and practices."

"Again, my best wishes to all of you on this day of historic importance for the Wampanoag and all the friends of American Indians."

INDIAN RELIGION IN PRISONS

The Commission office has met with the Commissioner, Assistant Director and the Affirmative Action Officer of the Department of Corrections several times in hopes of placing Indian medicine people in contact with the prisons throughout the State. They will provide spiritual and cultural guidance, counseling and make contact between the Indian prisoners and his family or community.

We find many problems and differences between the many cultures and the prison policies. The first thing is that Indians are not identified. The prisons classify their prisoners either as White, Black or Other. Secondly, the prison personnel is totally ignorant of the Indian spiritual ways and culture which brings about a negative attempt in counseling of Indian prisoners.

The Commission will continue to pursue this issue with the support of the Department of Corrections.

TITLE IV INDIAN EDUCATION PROGRAM

The Commission is presently assisting a group of Native Americans in the Worcester area in developing an Indian Education Program in the Worcester School System. The Program will be culturally oriented to include Indian arts and crafts, language, traditional dancing, music and medicines.

After a request from the group, the Commission began attending meetings and providing support and information to them. The necessary steps have been taken in getting the program started. A Parent's Advisory Committee has been formed and they are in the process of writing their grant application which will be submitted in a few months.

During the first year, cultural classes will be held on Saturdays. There will also be a small staff who will be working closely with parents and will work on a needs assessment for the following year.

GOVERNMENT SERVICE CAREERS PROGRAM

The Government Service Careers Program is an internship program designed to expose college students to the career opportunities available as State employees. Their staff seeks internship sites that can provide a positive working environment where an intern can acquire training and skills that will assist him/her in making career decisions.

The Commission has been involved in securing interns from that office and has taken the initial steps which include several meetings with the Director and submitting job descriptions. These job descriptions will describe the type of work this office wants done, the qualifications of the intern and what assistance this office will render to the intern. An intern will probably be hired after the first of the year.

COURT - LEGAL ASSISTANCE

The Commission has played an important role in the court system this year. Assistance has been rendered to a number of Native American defendants who requested legal information and/or support while they appeared in court. The Commission has made attempts to protect the defendants civil and legal rights and has given him a better understanding of court language and procedures. After investigating the alleged violation or crime, the Commission counsels the defendant and establishes an approach to his defense. The Commission has also been instrumental in acquiring a competent attorney for the defendant.

The Commission is now researching and investigating the legality of the courts' jurisdiction over Native American Indians in Massachusetts.

NATIVE AMERICAN ASSISTANCE PROGRAM

The Commission office responded to a request from the Native American Assistance Program/CETA Project in Lawrence. They would like to extend their program for another year. The official termination date is September 30th.

Their goals and objectives are to identify the Native American population in the Greater Lawrence area and bring information into their homes as well as provide supportive services.

The Commission wrote letters of support to the Executive Director of the Community Action Council and to the Director of the CETA Manpower Program. We received a response that the program was extended to December 31st.

MASHPEE NATIVE AMERICAN GRANTEE - TITLE III

The Commission has been working closely with the Mashpee Native American Grantee. Upon request, we have rendered advice, assistance and have reviewed grant applications for their programs. We have also attended meetings of the Cape Cod Planning and Economic Development Commission where grant applications for Mashpee were reviewed through the A-95 process.

EMPLOYMENT

The Commission developed a job bank by requesting resume's from individuals, tribal councils and organizations of persons who are seeking employment. A copy of the resume's are put on file in the office and copies are matched to job descriptions that come in and are sent out to such agency. A copy also goes to the State Referral & Recruitment office and to the State Affirmative Action office.

Phone calls are also made to the tribal councils, individuals and organizations when telephone requests for applicants come in.

NATIONAL AND LOCAL ORGANIZATIONS

The Commission is an active participant in National and Local organizations.

They include but are not limited to:

1. National Urban Indian Council
2. National Indian Education Association
3. National Congress of American Indians
4. Governor's Interstate Indian Council
5. Bureau of Indian Affairs
6. Department of Commerce
7. Small Business Administration
8. Federal/Regional Indian Task Force
9. Massachusetts Planning Committee to the White House Conference on Families
10. American Friends Service Committee
11. Northeast Regional Support Center
12. National Institute on Drug Abuse
13. Institute of Community Economics
14. Federated Eastern Indian League
15. Tribal Councils within the Commonwealth
16. Inter-Tribal Councils in the Commonwealth

